

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

GARY ALLEN BURTON,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:24-cv-1263-MHH-GMB
)	
STEVEN T. MARSHALL,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner Gary Allen Burton filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Doc. 1. Consistent with the usual practices of this court and 28 U.S.C. § 636(b)(1), the court referred the petition to a Magistrate Judge for a preliminary report and recommendation. *See McCarthy v. Bronson*, 500 U.S. 136 (1991). For the following reasons, the Magistrate Judge recommends the dismissal of this action for Burton's failure to prosecute his claims pursuant to Federal Rule of Civil Procedure 41(b).

I. DISCUSSION

On December 5, 2024, the court ordered Burton to file an amended habeas petition within 14 days. Doc. 7 at 2. The court advised Burton that his failure to comply by the deadline could result in the dismissal of this action for want of prosecution without further notice. Doc. 7 at 2. To date, Burton has not complied

with the court's order to file an amended habeas petition, and his time for doing so has expired. Accordingly, this action is due to be dismissed for Burton's failure to prosecute his claims.

II. RECOMMENDATION

For the reasons stated above, the court RECOMMENDS that this action be DISMISSED without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

III. NOTICE OF RIGHT TO OBJECT

The petitioner may file specific written objections to this report and recommendation. Any objections must be filed with the Clerk of Court within **14 days**. The petitioner must identify every objectionable finding of fact or recommendation and state the specific basis for every objection. The petitioner also must identify every claim in the petition that the report and recommendation has not addressed. Objections should not contain new allegations, present additional evidence, or repeat legal arguments.

A petitioner who fails to object to factual or legal conclusions in the Magistrate Judge's report and recommendation waives the right to challenge on appeal those same conclusions adopted in the District Judge's order. Without a proper objection, however, the court on appeal may review the unobjected-to factual

and legal conclusions for plain error if necessary in the interests of justice. 11th Cir. R. 3-1.

After receiving the petitioner's objections, a District Judge will conduct a *de novo* review of the relevant portions of the report and recommendation and may accept, reject, or modify in whole or in part the Magistrate Judge's findings of fact and recommendations. The District Judge also may refer this action back to the Magistrate Judge with instructions for further proceedings.

The petitioner may not appeal the Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. The petitioner may appeal only from a final judgment entered by a District Judge.

DONE and ORDERED on January 2, 2025.



GRAY M. BORDEN
UNITED STATES MAGISTRATE JUDGE